

1 ROD M. FLIEGEL, Bar No. 168289
rfliegel@littler.com
2 ALISON S. HIGHTOWER, Bar No. 112429
ahightower@littler.com
3 LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
4 San Francisco, California 94108.2693
Telephone: 415.433.1940
5 Facsimile: 415.399.8490

6 Attorneys for Defendant
SOUTHWEST AIRLINES CO.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 JUSTIN LEWIS, on behalf of himself, all
others similarly situated,

12 Plaintiff,
13

14 v.

15 SOUTHWEST AIRLINES CO., a Texas
Corporation; and DOES 1 through 100,
Inclusive,
16

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No.

**NOTICE OF REMOVAL OF CIVIL
ACTION BY DEFENDANT SOUTHWEST
AIRLINES CO.**

[28 U.S.C. §§ 1331, 1332, 1441(a) & 1446]

Complaint Filed: January 12, 2016
(Alameda Superior Court Case No.
RG16799791)

TO THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446, Defendant SOUTHWEST AIRLINES CO. ("SWA"), contemporaneously with the filing of this Notice of Removal of Civil Action ("Notice of Removal"), hereby removes this action to the United States District Court for the Northern District of California, based on the following facts:

I.

PLEADINGS AND PROCEEDINGS TO DATE

1. On January 12, 2016, Plaintiff Justin Lewis ("Plaintiff") filed a Complaint in the Alameda Superior Court captioned: *Justin Lewis, on behalf of himself, all others similarly situated v. Southwest Airlines Co., a Texas Corporation; and Does 1 to 100, Inclusive*, designated as Case No. RG16799791. A true and correct copy of the Complaint is attached hereto as **Exhibit 1**. A true and correct copy of the Summons is attached as **Exhibit 2**. The action was served on January 14, 2016. A true and correct copy of the Proof of Service of Summons and Complaint is attached as **Exhibit 3**.

2. On February 10, 2016, SWA filed its Answer to the Complaint in the Superior Court. A true and correct copy of SWA's Answer is attached hereto as Exhibit 4.

3. A true and correct copy of the remainder of the state court files are attached hereto as **Exhibit 5.**

4. Pursuant to 28 U.S.C. § 1446(d), the attached exhibits constitute all the process, pleadings and orders served upon SWA, filed or received in this action by SWA.

II.

STATEMENT OF REMOVAL JURISDICTION

5. This Court has original jurisdiction under 28 U.S.C. § 1331 (federal question) as Plaintiff's Complaint refers to and arises out of alleged violations of a federal statute, the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 *et seq.* Specifically, Plaintiff's Complaint asserts that SWA violated the FCRA by allegedly procuring or causing to be procured consumer reports for employment purposes without making the required disclosure in a document that allegedly was

“embedded with extraneous information, and not clear and unambiguous disclosures in stand-alone documents, [that] do not meet the requirements under the law.” (Complaint, ¶¶ 24-28.)¹

6. All other claims for relief under various California statutory laws are within the supplemental jurisdiction of this Court under 29 U.S.C. § 1367(a), because they are so related to the FCRA claims that they form part of the same case or controversy under Article III of the United States Constitution. Plaintiff’s other state law claims are all derivative of his FCRA claim since they “derive from a common nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them in one judicial proceeding.” *Kuba v. I-A Agric. Ass’n*, 387 F. 3d 850, 855 (9th Cir. 2004). Jurisdiction is thus appropriate for all of Plaintiff’s claims that are transactionally related to the federal claim.

A. IN THE ALTERNATIVE, CAFA JURISDICTION EXISTS

7. In the alternative, this Court also has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”). The CAFA grants federal district courts original jurisdiction over civil class action lawsuits filed under federal or state law in which there are at least 100 members of the class, and any member of a class of plaintiffs is a citizen of a state different from any defendant, and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d). The CAFA authorizes removal of qualifying actions in accordance with 28 U.S.C. § 1446. This case meets each of the CAFA requirements for removal because, as is set forth more particularly below: (1) the proposed class contains at least 100 members; (2) Defendant is not a state, state official, or other governmental entity; (3) the total amount in controversy exceeds \$5,000,000; and (4) there is diversity between at least one putative class member and the only named defendant.

8. The CAFA provides that “the number of members of all proposed plaintiff classes in the aggregate [not be] less than 100.” 28 U.S.C. § 1332(d)(5)(B). CAFA defines “class members” as those “persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.” 28 U.S.C. § 1332(d)(1)(D).

¹ SWA reserves all rights and does not waive its contention that Plaintiff lacks standing pursuant to Article III of the United States Constitution because he has no injury-in-fact.

1 9. Plaintiff alleges his four causes of action on a class-wide basis. His Fair Credit
2 Reporting Act (“FCRA”) putative class is alleged to consist of “[a]ll of Defendants’ current, former
3 and prospective applicants for employment in the United States who applied for a job with
4 Defendants at any time during the period beginning five years prior to the filing of this action and
5 ending on the date that final judgment is entered in this action.” (Complaint, ¶ 11(A).)

6 10. Although Plaintiff does not specifically allege a proposed number of class members,
7 the number of putative class members fitting the nationwide class going back five years as proposed
8 by Plaintiff is 39,294. (See Declaration of Shari Conaway, ¶¶ 5-6 [Exhibit 6].) CAFA’s numerosity
9 requirement is thus satisfied. See 28 U.S.C. § 1332(d)(5)(B).

10 11. CAFA diversity jurisdiction exists if “any member of a class of plaintiffs is a citizen
11 of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

12 12. For diversity purposes, a person is a “citizen” of the state in which he or she is
13 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F. 2d 1088 (9th Cir. 1983). A person’s domicile
14 is the place he or she resides with the intention to remain, or to which he or she intends to return.
15 *Kanter v. Warner–Lambert Co.*, 265 F. 3d 853, 857 (9th Cir. 2001). CAFA diversity jurisdiction
16 exists if “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28
17 U.S.C. § 1332(d)(2)(A).

18 13. Allegations of residency in a state court complaint can create a rebuttable
19 presumption of domicile supporting diversity of citizenship. *Lew v. Moss*, 797 F. 2d 747, 751 (9th
20 Cir. 1986). Here, Plaintiff alleges that he is and was at all times mentioned working in the State of
21 California. (Complaint, ¶ 5.) Defendant’s records show that on his job application, Plaintiff gave his
22 residential address as Culver City, California and he was hired to work at Los Angeles International
23 Airport. (Conaway Declaration, ¶ 3 and Ex. A thereto.) Accordingly, Plaintiff is a citizen of the
24 State of California. *Kanter*, 265 F. 3d at 857.

25 14. Plaintiff pleads that SWA is “a corporation organized and existing under the laws of
26 Texas.” (Complaint, ¶ 5) SWA was, at the time of the filing of this action, and remains, a Texas
27 corporation with its principal place of business in Dallas, Texas. (Conaway Decl., ¶ 2.) Moreover,
28 SWA’s corporate headquarters likewise is located in Dallas, Texas and from its Dallas headquarters

SWA's "high level" officers direct, control, and coordinate SWA's activities. (*Id.*) SWA's core executive and administrative functions are carried out in its headquarters in Dallas, Texas, including but not limited to policy-making, corporate decisions, air operation oversight, corporate communications (internal and external), finance, human resources, compliance, advertising and marketing, legal advice, and information technology. (*Id.*) Regular meetings of SWA's board of directors occur at its Dallas headquarters and the majority of its corporate officers work out of this headquarters. (*Id.*) Therefore, SWA is a citizen of Texas and not a citizen of California.

15. Defendants Does 1 through 100 are fictitious. (Complaint, ¶ 5.) Pursuant to 28 U.S.C. § 1441(a), the citizenship of defendants sued under fictitious names must be disregarded for the purpose of determining diversity jurisdiction. *Newcombe v. Adolf Coors Co.*, 157 F. 3d 686, 690-91 (9th Cir. 1998).

16. Since Plaintiff is a citizen of California and SWA is a citizen of Texas, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2)(A) is fully satisfied.

1. The Amount In Controversy Is Satisfied

17. CAFA requires the "matter in controversy" to exceed "the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). "The claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds" this amount. 28 U.S.C. § 1332(d)(6).

18. Plaintiff has not alleged a specific amount in controversy in his Complaint. "Where the complaint does not specify the amount of damages sought, the removing defendant must prove by a preponderance of the evidence that the amount in controversy has been met." *Abrego Abrego v. Dow Chemical Co.*, 443 F. 3d 676, 683 (9th Cir. 2006). "Under this burden, the defendant must provide evidence establishing that it is 'more likely than not' that the amount in controversy exceeds that amount." *Guglielmino v. McKee Foods Corp.*, 506 F. 3d 696, 699 (9th Cir. 2007); *accord*, *Rodriguez v. AT & T Mobility Serv. LLC*, 728 F. 3d 975 (9th Cir. 2013).

19. While Defendant denies Plaintiff's claims of wrongdoing and denies his request for relief thereon, the facial allegations in Plaintiff's Complaint and the total amount of statutory damages and attorneys' fees at issue in this action, when viewed in the light most favorable to

1 Plaintiff, is in excess of the jurisdictional minimum. *Luckett v. Delta Airlines, Inc.*, 171 F. 3d 295,
 2 298 (5th Cir. 1999) (facts presented in notice of removal, combined with plaintiffs' allegations,
 3 sufficient to support finding that jurisdictional limits satisfied). "In measuring the amount in
 4 controversy, a court must assume that the allegations of the complaint are true and that a jury will
 5 return a verdict for the plaintiff on all claims made in the complaint." *Kenneth Rothschild Trust v.*
 6 *Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (internal quotations
 7 omitted). *See also Schere v. Equitable Life Assurance Soc'y of the U.S.*, 347 F. 3d 394, 399 (2d Cir.
 8 2003) (recognizing that the ultimate or provable amount of damages is not what is considered in the
 9 removal analysis; rather, it is the amount put in controversy by plaintiff's complaint). The estimate
 10 of the amount in controversy should not be based on the "low end of an open-ended claim," but
 11 rather on a "reasonable reading of the value of the rights being litigated." *Werwinski v. Ford Motor*
 12 *Co.*, 286 F.3d 661, 666 (3d Cir. 2002) (citation omitted).

13 20. Further, as one district court held, "[u]nder this standard, 'the removing party's
 14 burden is "not daunting," and defendants are not obligated to "research, state, and prove the
 15 plaintiff's claims for damages.'" *Cagle v. C & S Wholesale Grocers, Inc.*, No. 2:13-cv-02134-MCE-
 16 KJN, 2014 U.S. Dist. LEXIS 21571, at *19-20 (E.D. Cal. Feb. 19, 2014) (citations omitted) (denying
 17 remand motion). That court noted that "[w]hen a '(d)efendant's calculations (are) relatively
 18 conservative, made in good faith, and based on evidence whenever possible,' the court may find that
 19 the '(d)efendant has established by a preponderance of the evidence that the amount in controversy is
 20 met.'" *Id.* at *20, quoting *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 1199, 1204-05 (E.D. Cal.
 21 2008) (citations omitted). Importantly, Defendant need not provide summary judgment-type
 22 evidence. *Cagle*, 2014 U.S. Dist. LEXIS 21571, at *21.

23 21. Plaintiff asserts claims for himself and the putative nationwide class, based on
 24 allegations that SWA has willfully violated the FCRA and two analogous California statutes, the
 25 Investigative Consumer Reporting Agencies Act and the Consumer Credit Reporting Agencies Act.

26 22. Plaintiff seeks statutory and actual damages, punitive damages, attorneys' fees, and
 27 injunctive relief. (Complaint, ¶¶ 39, 62-63, 78.) The FCRA provides for statutory damages for
 28 willful non-compliance in the amount of "not less than \$100 and not more than \$1,000." 15 U.S.C. §

1681n. Plaintiff does not allege the amount of statutory or actual damages sought. However, Plaintiff's counsel indicated that he seeks the maximum in statutory damages. (Declaration of Alison S. Hightower, ¶ 3 [Exhibit 7].) At the statutory maximum of \$1,000 per putative class member, Plaintiff seeks over \$39 million for the putative class of approximately 39,294 persons. At only \$250 per person, statutory damages if awarded would total \$9,823,500. Indeed, to reach \$5 million in controversy, Plaintiff and the putative class only have to receive \$127.25 each in statutory damages. (See Conaway Decl., ¶¶ 5-6.) This does not include any actual damages that Plaintiff and putative class members might recover nor any punitive damages sought. Moreover, \$127.25 represents only the third percentile of statutory damages that putative class members might recover – meaning that even with a very low per class member recovery, CAFA jurisdiction would still be satisfied.²

23. Furthermore, Plaintiff seeks attorneys' fees in his Complaint pursuant to all his causes of action. It is well settled that, in determining whether a complaint meets the amount in controversy requirement, the Court should consider the aggregate value of claims for damages *as well as* attorneys' fees. See, e.g., *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998) (attorneys' fees may be taken into account to determine jurisdictional amounts). In California, it is not uncommon for an attorneys' fees award to be 25 to 33 percent of the recovery. See, e.g., *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008), quoting *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). At the lower percentage (25%) of the potential attorneys' fee award, and assuming only 39,294 background screen for the putative class with each class member recovering the minimum statutory damages (\$3,929,400), Plaintiff has placed in controversy for attorneys' fees an amount equal to \$982,350. At the higher percentage (33%) of the potential attorneys' fee award,

² The FCRA provides statutory damages from \$100 to \$1,000 – a \$900 range. \$127.25 per putative class member thus represents only the third percentile of potential statutory damages within this range: $27.25 / 900 = 0.03028$. For purposes of comparison, the midpoint within the range of FCRA statutory damages would be \$550 per putative class member ($450 / 900$). Defendant reserves all rights to dispute the ascertainability of the amount of statutory and actual damages sought and to dispute that a class can or should be certified.

1 and assuming the maximum statutory damages (\$39,294,000), the amount of recoverable attorneys'
2 fees could be as much as \$12.95 million.

3 24. Accordingly, although SWA denies Plaintiff's claims of wrongdoing, based on the
4 foregoing, Plaintiff's claims for damages, attorneys' fees, and other monetary relief conservatively
5 exceed the jurisdictional minimum under CAFA. Particularly given the assertion by Plaintiff's
6 counsel that Plaintiff is seeking the maximum amount of statutory damages, the amount in
7 controversy clearly exceeds \$5 million.

8 25. Should CAFA jurisdiction over Plaintiff's claims not be appropriate for any reason,
9 there is still federal question jurisdiction over the FCRA claims, and all other claims for relief under
10 California law are within the supplemental jurisdiction of this Court under 29 U.S.C. § 1367(a), as
11 noted above.

12 III.

13 TIMELINESS OF REMOVAL

14 26. An action may be removed from state court by filing a notice of removal, together
15 with a copy of all process, pleadings, and orders served on the defendant, within thirty days of
16 defendant receiving an "amended pleading, motion, order or other paper from which it may *first be*
17 *ascertained* that the case is . . . removable." 28 U.S.C. § 1446(b) (emphasis added). Here, Plaintiff
18 filed his Complaint on January 12, 2016. On January 14, 2016, SWA was served with the Complaint
19 and Summons. (Exhibit 3) As such, this Notice of Removal is timely since it was filed within thirty
20 days of service of the Summons and Complaint.

21 IV.

22 VENUE

23 27. Venue is appropriate in this Court for purposes of this removal because the action was
24 removed from the Superior Court of California for the County of Alameda to the District embracing
25 the place where the action is pending pursuant to 28 U.S.C. §§ 84(c)(2), 1391, and 1441(a).³
26
27

28 ³ SWA reserves all rights with regard to seeking a potential change of venue.

V.

NOTICE TO COURT AND TO PARTIES

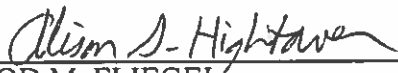
28. Contemporaneously with the filing of this Notice of Removal, written notice of the removal is given by the undersigned to counsel for Plaintiff. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Alameda Superior Court. A copy of the Notice to be filed with the Clerk of the Alameda Superior Court is attached hereto as **Exhibit 8**.

VI.

CONCLUSION

WHEREFORE, SWA removes the action now pending in the Alameda Superior Court to this Honorable Court.

Dated: February 12, 2016



ROD M. FLIEGEL
ALISON S. HIGHTOWER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
SOUTHWEST AIRLINES CO.

Firmwide: 138608217.1 081298.1020

EXHIBIT 1

FILED BY FAX
ALAMEDA COUNTY

January 12, 2016

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:

RG16799791

1 SHAUN SETAREH (SBN 204514)

shaun@setarehlaw.com

2 THOMAS SEGAL (SBN 222791)

thomas@setarehlaw.com

3 ALICE A. KIM (SBN 290023)

alice@setarehlaw.com

4 **SETAREH LAW GROUP**

5 9454 Wilshire Boulevard, Suite 907

6 Beverly Hills, California 90212

7 Telephone: (310) 888-7771

Facsimile: (310) 888-0109

8 Attorneys for Plaintiff,

9 JUSTIN LEWIS

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY ALAMEDA**

12
13 JUSTIN LEWIS, on behalf of himself, all others
14 similarly situated,

15 *Plaintiff,*

16 vs.

17 SOUTHWEST AIRLINES CO., a Texas
18 Corporation; and DOES 1 to 100, Inclusive

19 *Defendants.*

Case No.:

CLASS ACTION

COMPLAINT FOR:

1. Violation of 15 U.S.C. §§
1681b(b)(2)(A) (Fair Credit Reporting
Act);
2. Violation of 15 U.S.C. §§ 1681d(a)(1)
and 1681g(c) (Fair Credit Reporting
Act);
3. Violation of California Civil Code §
1786 *et seq.* (Investigative Consumer
Reporting Agencies Act)
4. Violation of California Civil Code §
1785 *et seq.* (Consumer Credit
Reporting Agencies Act)

JURY TRIAL DEMANDED

1 Plaintiff, JUSTIN LEWIS (hereafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendant
5 SOUTHWEST AIRLINES CO., a Texas corporation ("SOUTHWEST"), and DOES 1-100,
6 inclusively (collectively, "Defendants") for alleged violations of the Fair Credit Reporting Act
7 ("FCRA") and similar California laws.

8 2. Plaintiff alleges that Defendants routinely acquire consumer, investigative
9 consumer and/or consumer credit reports (referred to collectively as "credit and background
10 reports") to conduct background checks on Plaintiff and other prospective, current and former
11 employees and use information from credit and background reports in connection with their
12 hiring process without complying with the law. Plaintiff, individually and on behalf of all
13 others similarly situated current, former, and prospective employees, seeks compensatory and
14 punitive damages due to Defendants' systematic and willful violations of the FCRA, 15 U.S.C.
15 §§ 1681 *et seq.*, the California Investigative Consumer Reporting Agencies Act ("ICRAA")
16 (Cal. Civ. Code § 1786, *et seq.*), and the California Consumer Credit Reporting Agencies Act
17 ("CCRAA") (Cal. Civ. Code § 1785, *et seq.*).

18 **PARTIES**

19 5. Plaintiff was employed by Defendant as an hourly, non-exempt employee
20 working in the State of California from approximately March 2015 to May 2015.

21 6. Defendant SOUTHWEST is a corporation organized and existing under the laws
22 of Texas and also a citizen of California based on Plaintiff's information and belief.

23 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
24 participation in the conduct alleged herein, of the defendants sued as DOES 1-100, inclusive,
25 but is informed and believes and thereon alleges that said defendants are legally responsible for
26 the wrongful conduct alleged herein and therefore sues these defendants by such fictitious
27 names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
28 defendants when ascertained.

8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
herein, all Defendants were the agents, employees and/or servants, masters or employers of the
remaining defendants, and in doing the things hereinafter alleged, were acting within the course

1 and scope of such agency or employment, and with the approval and ratification of each of the
2 other Defendants.

3 9. Plaintiff alleges that each and every one of the acts and omissions alleged herein
4 were performed by, and/or attributable to, all Defendants, each acting as agents and/or
5 employees, and/or under the direction and control of each of the other defendants, and that said
6 acts and failures to act were within the course and scope of said agency, employment and/or
7 direction and control.

8 CLASS ALLEGATIONS

9 10. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure §382 because there is a well-defined community of interest
11 among the persons who comprise the readily ascertainable classes defined below and because
12 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
13 action.

14 11. Class Definitions: The classes are defined as follows:

15 A. **FCRA Class:** All of Defendants' current, former and prospective
16 applicants for employment in the United States who applied for a job with Defendants at any
17 time during the period beginning five years prior to the filing of this action and ending on the
18 date that final judgment is entered in this action.

19 B. **ICRAA Class:** All of Defendant's current, former, and prospective
20 applicants for employment in California, at any time during the period beginning five years
21 prior to the filing of this action and ending on the date that final judgment is entered into this
22 action.

23 C. **CCRAA Class:** All of Defendant's current, former, and prospective
24 applicants for employment in California, at any time during the period beginning seven years
25 prior to the filing of this action and ending on the date that final judgment is entered in this
26 action.

27 12. Reservation of Rights: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
28 right to amend or modify the class definitions with greater specificity, by further division into
subclasses and/or by limitation to particular issues.

13. Numerosity: The class members are so numerous that the individual joinder of
each individual class member is impractical. While Plaintiff does not currently know the exact

1 number of class members. Plaintiff is informed and believes that the actual number exceeds the
2 minimum required for numerosity under California law.

3 14. **Commonality and Predominance:** Common questions of law and fact exist as
4 to all class members and predominate over any questions which affect only individual class
5 members. These questions include, but are not limited to:

6 A. Wherein Defendants willfully failed to provide the class with stand-alone
7 written disclosures before obtaining a credit or background report in compliance with the
8 statutory mandates?

9 B. Whether Defendants willfully failed to identify the name, address,
10 telephone number, and/or website of the investigative consumer reporting agency conducting
11 the investigation?

12 C. Whether Defendants willfully failed to identify the source of the credit
13 report to be performed?

14 D. Wherein Defendants willfully failed to comply with the FCRA, ICRAA
15 and/or the CCAA?

16 15. **Typicality:** Plaintiff's claims are typical of the other class members' claims.
17 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or
18 a lack of a policy which resulted in Defendants failing to comply with the FCRA, ICRAA, and
19 CCAA as alleged herein.

20 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
21 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of
22 absent class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of
23 class members. Plaintiff will fairly and adequately represent and protect the interests of class
24 members.

25 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
26 that they have no known conflicts of interest with Plaintiff or absent class members, are
27 experienced in class action litigation and are dedicated to vigorously prosecuting this action on
28 behalf of Plaintiff and absent class members.

18. **Superiority:** A class action is vastly superior to other available means for fair
and efficient adjudication of class members' claims and would be beneficial to the parties and
the Court. Class action treatment will allow a number of similarly situated persons to

1 simultaneously and efficiently prosecute their common claims in a single forum without the
2 unnecessary duplication of effort and expense that numerous individual actions would entail. In
3 addition, the monetary amounts due to many individual class members are likely to be relatively
4 small and would thus make it difficult, if not impossible, for individual class members to both
5 seek and obtain relief. Moreover, a class action will serve an important public interest by
6 permitting class members to effectively pursue the recovery of monies owed to them. Further, a
7 class action will prevent the potential for inconsistent or contradictory judgments inherent in
8 individual litigation.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

11 **(15 U.S.C. §§ 1681b(b)(2)(A))**

12 **(By Plaintiff and the FCRA Class against all Defendants)**

13 19. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 20. Defendants are "persons" as defined by Section 1681a(b) of the FCRA.

15 21. Plaintiff and class members are "consumers" within the meaning Section
16 1681a(c) of the FCRA, because they are "individuals."

17 22. Section 1681a(d)(1) of the FCRA defines "consumer report" as
18 any oral, or other communication of any information by a consumer
19 reporting agency bearing on a consumer's credit worthiness, credit
20 standing, credit capacity, character, general reputation, personal
21 characteristics, or mode of living which is used or expected to be used or
22 collected in whole or in part for the purpose of serving as a factor in
23 establishing the consumer's eligibility" for employment purposes.

24 Thus a credit and background report qualifies as a consumer report.

25 23. Section 1681a(e) of the FCRA defines "investigative consumer report" as:
26 a consumer report or portion thereof in which information on a consumer's
27 character, general reputation, personal characteristics, or mode of living is
28 obtained through personal interviews with neighbors, friends, or associates
29 of the consumer reported on or with whom he is acquainted or who may
30 have knowledge concerning any such items of information.

31 Thus a credit and background report qualifies as an investigative consumer report.

32 24. Section 1681b(b) of the FCRA provides, in relevant part:

33 Conditions for furnishing and using consumer reports for employment purposes

(2) Disclosure to consumer

(A) In general

Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

- i. a *clear and conspicuous* disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that *consists solely of the disclosure*, that a consumer report may be obtained for employment purposes; and
- ii. the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person. (Emphasis Added).

25. As described above, Plaintiff alleges, on information and belief, that in evaluating him and other class members for employment, Defendants procured or caused to be prepared credit and background reports (i.e., a consumer report and/or investigative consumer report, as defined by 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

26. When Plaintiff applied for employment with Defendants, Defendants required him to fill out and sign an eight page Document entitled "Employment Application" ("Authorization").

27. In pertinent part the eight page Authorization states:

"I hereby authorize Southwest to procure a background/consumer report as part of its pre-employment background investigation of my application for employment. I acknowledge that I have been given a stand-alone Disclosure and Notification Statement that a background/consumer report will be requested for this purpose. I agree to sign a release permitting Southwest to obtain records under the federal Drug and Alcohol Testing regulations pertaining to me, created and maintained by a prior employer. I release all parties from liability for any damage that may result from this investigation."

28. Because the purported disclosures are embedded with extraneous information, and are not clear and unambiguous disclosures in stand-alone documents, they do not meet the requirements under the law.

29. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer report or investigative consumer report for employment purposes unless the disclosure is made in a document that consists solely of the disclosure and the consumer has authorized, in writing,

the procurement of the report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii). The inclusion of the Release and other extraneous information, therefore, violates § 1681b(b)(2)(A) of the FCRA.

30. Although the disclosure and the authorization may be combined in a single document, the Federal Trade Commission ("FTC") has warned that the form should not include any extraneous information or be part of another document. For example, in response to an inquiry as to whether the disclosure may be set forth within an application for employment or whether it must be included in a separate document, the FTC stated:

The disclosure may not be part of an employment application because the language [of 15 U.S.C. § 1681b(b)(2)(A) is] intended to ensure that it appears conspicuously in a document not encumbered by any other information. The reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from being distracted by other information side-by-side within the disclosure.

31. The plain language of the statute also clearly indicates that the inclusion of a liability release in a disclosure form violates the disclosure and authorization requirements of the FCRA, because such a form would not consist "solely" of the disclosure. In fact, the FTC expressly has warned that the FCRA notice may not include extraneous information such as a release. In a 1998 opinion letter, the FTC stated:

[W]e note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist 'solely' of the disclosure that a consumer report may be obtained for employment purposes.

32. In a report dated July 2011, the FTC reiterated that: "the notice [under 15 U.S.C. § 1681b(b)(2)(A)] may not include extraneous or contradictory information, such as a request for a consumer's waiver of his or her rights under the FCRA."

33. By including the Release and other extraneous information, Defendants willfully disregarded the FTC's regulatory guidance and violated Section 1681b(b)(2)(A) of the FCRA. Additionally, the inclusion of the extraneous provisions causes the disclosure to fail to be "clear and conspicuous" and "clear[] and accurate[]," and thus violates §§ 1681b(b)(2)(A) and 1681d(a).

34. Defendants' conduct in violation of Section 1681b(b)(2)(A) of the FCRA was and is willful. Defendants acted in deliberate or reckless disregard of their obligations and the rights of applicants and employees, including Plaintiff and class members. Defendants' willful

1 conduct is reflected by, among other things, the following facts:

2 (a) Defendants are a large corporation with access to legal advice;

3 (b) Defendants required a purported authorization to perform credit and
4 background checks in the process of employing the class members which, although defective,
5 evidences Defendants' awareness of and willful failure to follow the governing laws concerning
6 such authorizations;

7 (c) The plain language of the statute unambiguously indicates that inclusion
8 of a liability release and other extraneous information in a disclosure form violates the
9 disclosure and authorization requirements; and

10 (d) The FTC's express statements, pre-dating Defendants' conduct, which
11 state that it is a violation of Section 1681b(b)(2)(A) of the FCRA to include a liability waiver in
12 the FCRA disclosure form.

13 35. Defendants required a liability release, in the disclosure form, along with other
14 extraneous information, that releases all parties involved from any liability and responsibility
15 for releasing information they have about the Plaintiff to Defendants.

16 36. Based upon the facts likely to have evidentiary support after a reasonable
17 opportunity for further investigation and discovery, Plaintiff alleges that Defendants have a
18 policy and practice of procuring investigative consumer reports or causing investigative
19 consumer reports to be procured for applicants and employees without informing such
20 applicants of their right to request a summary of their rights under the FCRA at the same time as
21 the disclosure explaining that an investigative consumer report may be made. Pursuant to that
22 policy and practice, Defendants procured investigative consumer reports or caused investigative
23 consumer reports to be procured for Plaintiff and class members, as described above, without
24 informing class members of their rights to request a written summary of their rights under the
25 FCRA.

26 37. Accordingly, Defendants willfully violated and continue to violate the FCRA
27 including, but not limited to, §§ 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is
28 reflected by, among other things, the facts set forth above.

38. As a result of Defendants' illegal procurement of credit and background reports
by way of their inadequate disclosures, as set forth above, Plaintiff and class members have
been injured including, but not limited to, having their privacy and statutory rights invaded in

1 violation of the FCRA.

2 39. Plaintiff, on behalf of himself and all class members, seeks all available remedies
3 pursuant to 15 U.S.C. § 1681n, including statutory damages and/or actual damages, punitive
4 damages, injunctive and equitable relief and attorneys' fees and costs.

5 40. In the alternative to Plaintiff's allegation that these violations were willful,
6 Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if any,
7 under 15 U.S.C. § 1681o, including actual damages and attorneys' fees and costs.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF FCRA**

10 **(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

11 **(By Plaintiff and the FCRA Class against all Defendants)**

12 41. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 42. Section 1681d(a)(1) provides:

14 Disclosure of fact of preparation

15 A person may not procure or cause to be prepared an investigative consumer report on any
16 consumer unless--

17 (1) it is *clearly and accurately disclosed* to the consumer that an
18 investigative consumer report including information as to his character, general
19 reputation, personal characteristics, and mode of living, whichever are applicable,
20 may be made, and such disclosure;

21 (2) is *made in a writing mailed, or otherwise delivered*, to the
22 consumer, not later than three days after the date on which the report was first
23 requested, and

24 (3) *includes a statement informing the consumer of his right to request the*
25 *additional disclosures* provided for under subsection (b) of this
26 *section and the written summary of the rights of the consumer prepared pursuant*
27 *to section 1681g(c) of this title; (Emphasis Added.)*

28 (4) Subsection (b) of Section 1681d(a)(1) provides:

Any person who procures or causes to be prepared an investigative consumer report
on any consumer shall, upon written request made by the consumer within a
reasonable period of time after the receipt by him of the disclosure required by
subsection (a)(1) of this section (a)(1) of this section, make a *complete and accurate*
disclosure of the nature and scope of the investigation requested; (Emphasis
Added). This disclosure shall be made in a writing mailed, or otherwise delivered, to
the consumer not later than five days after the date on which the request for such

disclosure was received from the consumer or such report was first requested, whichever is the later.

43. Defendant did not comply with Section 1681d(a)(1).

44. Section 1681g(c) further provides summary of rights to obtain and dispute information in consumer reports and to obtain credit scores as:

(A) Commission summary of rights required

The Commission shall prepare a *model summary of the rights* of consumers under this subchapter.

(B) Content of summary

The summary of rights prepared under subparagraph (A) shall include a description of—

- (1) the *right of a consumer to obtain a copy of a consumer report* under subsection (a) of this section from each consumer reporting agency;
- (2) the *frequency and circumstances under which a consumer is entitled to receive a consumer report without charge* under section 1681j of this title;
- (3) the right of a consumer to *dispute information* in the file of the consumer under section 1681i of this title;
- (4) the *right of a consumer to obtain a credit score* from a consumer reporting agency, and a description of how to obtain a credit score;
- (5) the *method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge*, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and
- (6) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title; (Emphasis Added).

45. Defendant did not comply with 1681g(c).

THIRD CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF ICRAA

(Cal. Civ. Code § 1786 *et seq.*)

(By Plaintiff and the ICRAA Class against all Defendants)

46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

47. Defendants are "persons" as defined by Section 1786.2(a) of the Investigative Consumer Reporting Agencies Act ("ICRAA").

48. Plaintiff and ICRAA Class members are "consumers" within the meaning

1 Section 1786.2(b) of the ICRAA, because they are "individuals."

2 49. Section 1786.2(c) of the ICRAA defines "investigative consumer report" as:

3 a consumer report in which information on a consumer's character,
4 general reputation, personal characteristics, or mode of living is obtained
5 through any means.

6 50. Thus a background checks qualifies as an investigative consumer
7 report under the ICRAA

8 51. Section 1786.16(a)(2) of the ICRAA provides, in relevant part:

9 If, at any time, an investigative consumer report is sought for employment
10 purposes...the person seeking the investigative consumer report may procure the
11 report, or cause the report to be made, only if all of the following apply:

12 (B) The person procuring or causing the report to be made provides a *clear and*
13 *conspicuous* disclosure in writing to the consumer at any time before the report is
14 procured or caused to be made *in a document that consists solely of the disclosure*, that:

15 (i) An investigative consumer report may be obtained.

16 (ii) The permissible purpose of the report is identified.

17 (iii) The disclosure may include information on the consumer's character,
18 general reputation, personal characteristics, and mode of living.

19 (iv) Identifies the *name, address, and telephone number of the investigative*
20 *consumer reporting agency* conducting the investigation.

21 (v) Notifies the consumer in writing of the nature and scope of the investigation
22 requested, including the provisions of Section 1786.22.

23 (vi) *Notifies the consumer of the Internet Web site address of the investigative*
24 *consumer reporting agency* identified in clause (iv), or, *if the agency has no*
25 *Internet Web site address, the telephone number of the agency*, where the
26 consumer may find information about the investigative reporting agency's privacy
27 practices, including whether the consumer's personal information will be sent
28 outside the United States or its territories and information that complies with
subdivision (d) of Section 1786.20. This clause shall become operative on January
1, 2012.

(C) The consumer has authorized in writing the procurement of the report. (Emphasis
added.)

25 52. As described above, Plaintiff alleges that in evaluating him and other class
26 members for employment, Defendants procured or caused to be prepared investigative
27 consumer report (e.g. background checks), as defined by Cal. Civ. Code § 1786.2(c).

28 53. When Plaintiff applied for employment with Defendants, Defendants required
him to fill out and sign an eight page Document entitled "EMPLOYMENT APPLICATION"

1 ("Authorization").

2 54. In pertinent part the eight page Authorization states:

3 "I hereby authorize Southwest to procure a background/consumer report as part of its
4 pre-employment background investigation of my application for employment. I
5 acknowledge that I have been given a stand-alone Disclosure and Notification Statement
6 that a background/consumer report will be requested for this purpose. I agree to sign a
7 release permitting Southwest to obtain records under the federal Drug and Alcohol
8 Testing regulations pertaining to me, created and maintained by a prior employer. I
9 release all parties from liability for any damage that may result from this investigation."

10 Because the purported disclosures are embedded with extraneous information, and are
11 not clear and unambiguous disclosures in stand-alone documents, they do not meet the
12 requirements under the law.

13 55. Under the ICRAA, it is unlawful to procure or caused to be procured, a consumer
14 report or investigative consumer report for employment purposes unless the disclosure is made
15 in a document that consists solely of the disclosure and the consumer has authorized, in writing,
16 the procurement of the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of the
17 Release and other extraneous information, therefore, violates § 1786.16(a)(2)(B) of the ICRAA.

18 56. The plain language of the statute clearly indicates that the inclusion of a liability
19 release in a disclosure form violates the disclosure and authorization requirements of the
20 ICRAA, because such a form would not consist "solely" of the disclosure.

21 57. By including the Release and other extraneous information, Defendants willfully
22 violated § 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous
23 provisions causes the disclosure to fail to be "clear and conspicuous" and thus violates §
24 1786.16(a)(2)(B).

25 58. In addition, pursuant to § 1786.16(a)(2)(B)(iv) and (vi) of the ICRAA, the
26 disclosure form must notify the consumer of the name, address, telephone number, and/or
27 website address of the investigative consumer reporting agency conducting the investigation.
28 Defendants failed to identify in the disclosure form the name, address, phone number, or
website of the investigative consumer reporting agency conducting the investigation, and thus
violated § 1786.16(a)(2)(B)(iv) and (vi) of the ICRAA.

59. Based upon facts that are likely to have evidentiary support after a reasonable
opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and
practice of failing to provide adequate written disclosures to applicants and employees, before

1 procuring background checks or causing background checks to be procured, as described above.
2 Pursuant to that policy and practice, Defendants procured background checks or caused
3 background checks to be procured for Plaintiff and class members without first providing a
4 written disclosure in compliance with § 1786.16(a)(2)(B) of the ICRAA, as described above.

5 60. Defendants' conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was and is
6 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
7 obligations and the rights of applicants and employees, including Plaintiff and class members.
8 Defendants' willful conduct is reflected by, among other things, the following facts:

9 (e) Defendants are large corporations with access to legal advice.

10 (f) Defendants required a purported authorization to perform credit and
11 background checks in the process of employing the class members which, although defective,
12 evidences Defendants' awareness of and willful failure to follow the governing laws concerning
13 such authorizations; and

14 (g) The plain language of the statute unambiguously indicates that inclusion
15 of a liability release and other extraneous information in a disclosure form violates the
16 disclosure and authorization requirements, and that the disclosure form must contain the name,
17 address, phone number, and/or website address of the investigative consumer reporting agency
18 conducting the investigation.

19 61. As a result of Defendants' illegal procurement of background reports by way of
20 their inadequate disclosures, as set forth above, Plaintiff and class members have been injured
21 including, but not limited to, having their privacy and statutory rights invaded in violation of the
22 ICRAA.

23 62. Plaintiff, on behalf of himself and all class members, seeks all available remedies
24 pursuant to Cal. Civ. Code § 1786.50, including statutory damages and/or actual damages,
25 punitive damages, and attorneys' fees and costs.

26 63. In the alternative to Plaintiff's allegation that these violations were willful or
27 grossly negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate
28 remedy, if any, under Cal. Civ. Code § 1786.50(a), including actual damages and attorneys' fees
29 and costs.

30 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF CCRAA**

3 (Cal. Civ. Code § 1785 *et seq.*)

4 (By Plaintiff and the CCRAA Class against all Defendants)

5 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 65. Defendants are "persons" as defined by Section 1785.3(j) of the Consumer
7 Credit Reporting Agencies Act ("CCRAA").

8 66. Plaintiff and CCRAA Class members are "consumers" within the meaning
9 Section 1785.3(b) of the CCRAA, because they are "natural individuals."

10 67. Section 1785.3(c) of the ICRAA defines "consumer credit report" as:

11 any written, oral, or other communication of any information by a consumer
12 credit reporting agency bearing on a consumer's credit worthiness, credit
13 standing, or credit capacity, which is used or is expected to be used, or collected
14 in whole or in part, for the purpose of serving as a factor in establishing the
15 consumer's eligibility for: ... (2) employment purposes...

16 68. Thus a credit report qualifies as a consumer credit report under
17 the CCRAA.

18 69. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

19 Prior to requesting a consumer credit report for employment purposes, the user of
20 the report shall provide written notice to the person involved. The notice shall
21 inform the person that a report will be used, and *shall identify the specific basis*
22 *under subdivision (a) of Section 1024.5 of the Labor Code for use of the report.*
23 *The notice shall also inform the person of the source of the report...*

24 (Emphasis added.)

25 70. As described above, Plaintiff alleges that in evaluating him and other class
26 members for employment, Defendants procured or caused to be prepared consumer credit
27 reports (e.g. credit reports), as defined by Cal. Civ. Code § 1785.3(c).

28 71. When Plaintiff applied for employment with Defendants, Defendants required
29 him to fill out and sign an eight page Document entitled "EMPLOYMENT APPLICATION"
30 ("Authorization").

31 72. In pertinent part the eight page Authorization states:

32 "I hereby authorize Southwest to procure a background/consumer report as part of its
33 pre-employment background investigation of my application for employment. I
34 acknowledge that I have been given a stand-alone Disclosure and Notification Statement
35 that a background/consumer report will be requested for this purpose. I agree to sign a

1 release permitting Southwest to obtain records under the federal Drug and Alcohol
2 Testing regulations pertaining to me, created and maintained by a prior employer. I
3 release all parties from liability for any damage that may result from this investigation."

4 73. The Authorization does not identify the specific basis under subdivision (a) of
5 Section 1024.5 of the Labor Code for use of the credit report. Nor does the Authorization
6 identify the source of any credit report. Both of these omissions Authorization clearly violate §
7 1785.20.5(a) of the CCRAA, as delineated above.

8 74. Based upon facts that are likely to have evidentiary support after a reasonable
9 opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and
10 practice of failing to provide adequate written disclosures to applicants and employees, before
11 procuring credit reports or causing credit reports to be procured, as described above. Pursuant
12 to that policy and practice, Defendants procured credit reports or caused credit reports to be
13 procured for Plaintiff and class members without first providing a written notice in compliance
14 with § 1785.20.5(a) of the CCRAA, as described above.

15 75. Defendants' conduct in violation of § 1785.20.5(a) of the CCRAA was and is
16 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
17 obligations and the rights of applicants and employees, including Plaintiff and class members.
18 Defendants' willful conduct is reflected by, among other things, the following facts:

19 (h) Defendants are large corporations with access to legal advice;

20 (i) Defendants required a purported authorization to perform credit checks in
21 the process of employing the class members which, although defective, evidences Defendants'
22 awareness of and willful failure to follow the governing laws concerning such authorizations;
23 and

24 (j) The plain language of the statute unambiguously indicates that failure to
25 include the provisions identified above violates the CCRAA's notice requirements, and that the
26 notice must identify the specific basis under subdivision (a) of Section 1024.5 of the Labor
27 Code for use of the credit report and must identify the source of any credit report.

28 76. As a result of Defendants' illegal procurement of credit reports by way of their
inadequate notice, as set forth above, Plaintiff and class members have been injured including,
but not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

77. Plaintiff, on behalf of himself and all class members, seeks all available remedies
pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or actual damages,

1 punitive damages, injunctive relief, and attorneys' fees and costs.

2 78. In the alternative to Plaintiff's allegation that these violations were willful,
3 Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if any,
4 under Cal. Civ. Code § 1785.31(a)(1), including but not limited to actual damages and
5 attorneys' fees and costs.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
8 relief and judgment against Defendants as follows:

- 9 A. An order that the action be certified as a class action;
10 B. An order that Plaintiff be appointed class representative;
11 C. An order that counsel for Plaintiff be appointed class counsel;
12 D. Statutory penalties;
13 E. Civil penalties;
14 F. Punitive damages;
15 G. Injunctive relief;
16 H. Costs of suit;
17 I. Interest;
18 J. Reasonable attorneys' fees; and
19 K. Such other relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury
22 trial on all issues so triable.

23 Dated: January 12, 2016

Respectfully submitted,

24 SETAREH LAW GROUP

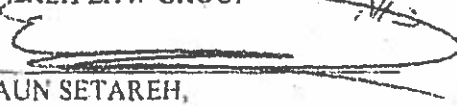
25 By 
26 SHAUN SETAREH,
27 Attorney for Plaintiff,
28 JUSTIN LEWIS, on behalf of himself, and all
others similarly situated

EXHIBIT 2

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SOUTHWEST AIRLINES CO., a Texas corporation; and DOES 1 to 100 inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JUSTIN LEWIS, on behalf of himself, all others similarly situated,

SUM-100

FOR COURT USE ONLY
(LA CORTE)
FILED BY FAX
ALAMEDA COUNTY

January 12, 2016

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información en continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos oídos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desochar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Rene C. Davidson

1225 Fallon Street

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o

si no tiene abogado, es):

Shaun Setarch, 9454 Wilshire, Blvd., Ste 907, Beverly Hills, CA 90077

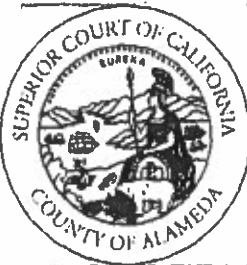
DATE: January 12, 2016
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

EXHIBIT 3

ORIGINAL

13544264

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY Shaun Setareh SBN 204514 Setareh Law Group 9454 Wilshire Blvd., Suite 907 Beverly Hills CA 90212 (310) 888-7771 ATTORNEY FOR Plaintiff	FOR COURT USE ONLY FILED ALAMEDA COUNTY JAN 19 2016 CLERK OF THE SUPERIOR COURT <i>Adria Canero</i> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA 1225 Fallon St. Oakland, CA 94612	
PLAINTIFF/PETITIONER: Justin Lewis	CASE NUMBER: RG16799791
DEFENDANT/RESPONDENT: Southwest Airlines Co.	
Proof of Service of Summons	

BY FAX

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of:

Summons

Civil Case Cover Sheet

Complaint

3a. Party Served:

Southwest Airlines Co., a Texas Corporation

3b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made):

Becky DeGeorge
 Agent for CSC

4. Address where the party was served:

2710 Gateway Oaks Dr., Ste 150N
 Sacramento, CA 95833

5. I served the party:

a. By personal service, I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party.

(1) on: 1/14/2016 (2) at: 11:02 AM

CONTINUED ON NEXT PAGE

PLAINTIFF/PETITIONER: Justin Lewis	CASE NUMBER: RG16799791
DEFENDANT/RESPONDENT: Southwest Airlines Co.	

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of: Southwest Airlines Co., a Texas Corporation

under the following Code of Civil Procedure section:

416.10 (Corporation)

7. Person who served papers

a. Name: Lori Brown

b. Address: 14748 Pipeline Avenue, Suite B, Chino Hills, CA 91709

c. Telephone number: 909-664-9565

d. The fee for this service was: 65.95

e. I am:

(3) ☒ a registered California process server:

(i) ☒ Independent Contractor

(ii) Registration No.: 2015-01 Expires: 1/4/2017

(iii) County: Sacramento

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/17/2016

Lori Brown

Rapid Legal, Inc., San Bernardino Co. Reg. #1086, Expires 04-23-16

Form Adopted for Mandatory Use
Judicial Council of California POS-010
[Revised January 1, 2007]

Proof of Service of Summons

Invoice No: 1130360

Code of Civil Procedure, §417.10

EXHIBIT 4

1 ROD M. FLIEGEL, Bar No. 168289
rfliegel@littler.com
2 ALISON S. HIGHTOWER, Bar No. 112429
ahightower@littler.com
3 LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
4 San Francisco, California 94108.2693
Telephone: 415.433.1940
5 Facsimile: 415.399.8490

6 Attorneys for Defendant
SOUTHWEST AIRLINES CO.

ENDORSED
FILED
ALAMEDA COUNTY

FEB 10 2015

CLERK OF THE SUPERIOR COURT
By *Marina Carrera*
Marina Carrera, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10

11 JUSTIN LEWIS, on behalf of himself, all
12 others similarly situated,

13 Plaintiff,

14 v.

15 SOUTHWEST AIRLINES CO., a Texas
16 Corporation; and DOES 1 through 100,
Inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. RG16799791

DEFENDANT SOUTHWEST AIRLINES
CO.'S ANSWER TO PLAINTIFF'S CLASS
ACTION COMPLAINT

COPY
FAXED

1 Defendant Southwest Airlines Co. ("Defendant"), through its undersigned counsel, answers
2 the Complaint of Plaintiff Justin Lewis.

3 **GENERAL DENIAL**

4 1. Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant
5 hereby answers Plaintiff's unverified Complaint by generally denying each and every allegation
6 contained therein, by denying that Plaintiff has been damaged or has sustained any damages as a
7 result of the conduct alleged therein and by asserting the following separate and distinct additional
8 defenses. Defendant further denies that this case is appropriate for class treatment.

9 **ADDITIONAL DEFENSES**

10 2. Without admitting any of the allegations of the Complaint and without admitting or
11 acknowledging that Defendant bears any burden of proof as to any of them, Defendant asserts the
12 following additional defenses. Defendant intends to rely upon any additional defenses that become
13 available or apparent during pretrial proceedings and discovery in this action and hereby reserves the
14 right to amend this Answer to assert all such further defenses. Defendant also expressly denies the
15 existence of any alleged putative class of "similarly situated" individuals that Plaintiff purports to
16 represent in this lawsuit pursuant to California Code of Civil Procedure § 382, Federal Rule of Civil
17 Procedure 23, and California Business & Professions Code §§ 17203-17204. Defendant thus
18 expressly denies the existence of any such group each and every time it references "Plaintiff" as if
19 fully set forth therein. All defenses asserted are also asserted against the putative class, except where
20 the claim is asserted only on behalf of the named Plaintiff.

21 1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

22 2. The Court lacks jurisdiction over the claims of certain persons, including putative
23 class members, to the extent they are subject to arbitration.

24 3. Plaintiff's Complaint, and each and every cause of action contained therein, are barred
25 in whole or in part because, at all material times, Defendant acted reasonably, in good faith and
26 without malice based upon all relevant facts and circumstances known by Defendant at the time, and
27 did not at any time willfully or negligently fail to comply with the applicable law, including but not
28

1 limited to the Fair Credit Reporting Act ("FCRA"), the Consumer Credit Reporting Agencies Act
2 ("CCRAA") and the Investigative Consumer Reporting Agencies Act ("ICRAA").

3 4. Plaintiff's claims for statutory damages and punitive damages violate the Fourth, Fifth,
4 Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of
5 the California Constitution because: (a) the punitive damages claimed are vastly disproportionate to
6 the statutory and/or actual damages claimed or available; (b) the award of punitive and/or statutory
7 damages would constitute an arbitrary and capricious taking of Defendants' property which is
8 unjustified by any rational governmental interest; (c) the award of punitive damages with wholly
9 standardless discretion is inconsistent with due process; and/or (d) the statutes, including but not
10 limited to Section 616 of the FCRA (15 U.S.C. § 1681n), the CCRAA, and the ICRAA are
11 unconstitutionally vague and unjustifiably arbitrary.

12 5. Plaintiff's claims, and those of putative class members, are barred, in whole or in part,
13 to the extent that Plaintiff and putative class members did not suffer any cognizable injury nor
14 suffered any damages and have no standing pursuant to Article III of the United States Constitution.

15 6. Plaintiff's substantive claims and his claims for damages (including but not limited to
16 Plaintiff's claims under sections 1785, *et seq.* and 1786, *et seq.* of the California Civil Code), which
17 seek to recover, among other things, punitive damages and/or penalties, violate the Fourth, Fifth,
18 Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of the
19 California Constitution. Defendant specifically alleges that sections 1785.20.5(a) and 1786.16(b) of
20 the California Civil Code are unconstitutionally vague and ambiguous.

21 7. Plaintiff's individual and class-wide claims are excluded from coverage by Section
22 604 of the FCRA (15 U.S.C. § 1681b) and corresponding provisions of California law to the extent
23 that Defendants obtained any background reports in connection with an investigation of compliance
24 with federal, state or local laws and regulations, the rules of self-regulatory organization or any pre-
25 existing policies (15 U.S.C. § 1681a(y)).

26 8. Plaintiff's claims, and those of putative class members, are subject to dismissal
27 because the screening reports Defendant received were not "consumer reports" within the meaning
28 of the CCRAA and the ICRAA.

1 9. Plaintiff's claims are barred, in whole or in part, because notwithstanding
2 Defendant's alleged non-compliance, Plaintiff otherwise was aware of his purported statutory rights.

3 10. Defendant alleges that it has complied with the FCRA, the CCRAA, and the ICRAA
4 in the handling of Plaintiff's consumer report and/or investigative consumer report and is, therefore,
5 entitled to each and every defense stated in and available under the FCRA, the CCRAA, and the
6 ICRAA and to all limitations of liability.

7 11. Defendant alleges that Plaintiff's Complaint, and each and every cause of action
8 contained therein, are barred in whole or in part because Plaintiff failed to comply fully or at all with
9 procedures available and/or required under the FCRA, the CCRAA, and the ICRAA to address
10 Plaintiff's concerns and/or otherwise failed to take reasonable steps to avoid harm.

11 12. Defendant maintained reasonable procedures to comply with applicable law at all
12 times relevant to Plaintiff's Complaint.

13 13. Plaintiff is not entitled to recover the equitable relief he seeks because: (a) an
14 adequate remedy at law exists; (b) Plaintiff lacks standing to seek equitable relief; (c) equitable relief
15 is only available to the Federal Trade Commission and Consumer Financial Protection Bureau, not
16 to private plaintiffs and the Court lacks subject matter jurisdiction to issue an injunction; (d) Plaintiff
17 is not entitled to such relief for any claimed violation of the ICRAA or the CCRAA because neither
18 statute provides such relief as a remedy; and (e) Plaintiff's claim for equitable relief is moot in any
19 event.

20 14. Plaintiff is barred from recovering statutory damages under the ICRAA because the
21 ICRAA by its terms bars recovery of statutory damages in class actions.

22 15. The damages alleged by Plaintiff under California law are not reasonable and are thus
23 barred by California Civil Code § 3359.

24 16. Plaintiff's Complaint, and each and every claim for relief therein, are barred in whole
25 or in part because Plaintiff seeks to recover for alleged harm that is outside of the applicable statute
26 of limitations, including but not limited to, 15 U.S.C. § 1681p of the FCRA, California Civil Code
27 § 1786.52 of the ICRAA, and California Civil Code § 1785.33 of the CCRAA.

28 ///

1 17. Plaintiff's claims are barred, in whole, or in part, by the equitable theories of estoppel,
2 waiver, and laches.

3 18. Plaintiff's claims are barred, in whole or in part, because notwithstanding
4 Defendant's alleged non-compliance, Plaintiff otherwise was aware of his purported statutory rights.

5 19. All of Plaintiff's claims on behalf of absent putative class members fail because
6 Plaintiff cannot meet his burden of demonstrating that each requirement of class certification,
7 including but not limited to ascertainability, adequacy, typicality, commonality, predominance, and
8 superiority, is met here, and because certifying a class in the circumstances of this case would violate
9 Defendant's rights to due process under the law. To the extent that class certification is nonetheless
10 granted at a future date, Defendant alleges and asserts each of the defenses previously stated herein
11 against each and every putative class member.

12 20. Adjudication of this action on a class-wide basis, as applied to the facts and
13 circumstances of this case, would constitute a denial of Defendant's rights to trial by jury and to
14 substantive and procedural due process, in violation of the Fourteenth Amendment of the United
15 States Constitution. *See, e.g., Wal-Mart v. Dukes*, 131 S. Ct. 2541 (2011).

16 21. The Complaint is barred in whole or in part because Plaintiff did not suffer any
17 cognizable damage or other harm as a proximate result of any alleged act or omission of Defendant
18 or its agents or employees.


19 22. Assuming that Plaintiff suffered or sustained any loss, damage or injury, which
20 Defendant specifically denies, such loss, damage or injury was proximately caused or contributed to
21 by the negligence or wrongful conduct of other parties, persons or entities, and that their negligence
22 or wrongful conduct was an intervening and superseding cause of the purported loss, damage or
23 injury of which Plaintiff complains.

24 23. Plaintiff's damages, if any, were caused by the negligence and/or acts or omissions of
25 third parties other than Defendant, whether or not parties to this action. By reason thereof,
26 Plaintiff's damages, if any, as against Defendant, must be reduced by the proportion of fault
27 attributable to such third parties, and to the extent that this is necessary, Defendant may be entitled to
28 partial indemnity from such third parties on a comparative fault basis.

1 WHEREFORE, DEFENDANT prays for judgment in its favor and against Plaintiff as
2 follows:

- 3 1. That the Complaint be dismissed with prejudice;
- 4 2. That Plaintiff takes nothing by way of the Complaint;
- 5 3. That Defendant recover its attorney's fees, costs and disbursements in this action; and
- 6 4. For such other and further relief as the Court deems just and proper.

7 Dated: February 10, 2016

8 
9 ROD M. FLIEGEL
10 ALISON S. HIGHTOWER
11 LITTLER MENDELSON, P.C.
Attorneys for Defendant
SOUTHWEST AIRLINES CO.

12 Firmwide:138284939.1 081298.1020
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 168289 / 112429 NAME: Rod M. Fliegel / Alison S. Hightower FIRM NAME: Littler Mendelson, P.C. STREET ADDRESS: 650 California Street, 20th Floor CITY: San Francisco STATE: CA ZIP CODE: 94108-2693 TELEPHONE NO.: 415.433.1940 FAX NO.: 415.399.8490 E-MAIL ADDRESS: rfliegel@littler.com / ahightower@littler.com ATTORNEY FOR (name): Defendant Southwest Airlines Co.		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY FEB 16 2016 CLERK OF THE SUPERIOR COURT <i>Maria Carrera</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: Rene C. Davidson Courthouse		
Plaintiff/Petitioner: Justin Lewis Defendant/Respondent: Southwest Airlines Co.		CASE NUMBER: RG16799791
PROOF OF SERVICE-CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax		JUDICIAL OFFICER: DEPARTMENT:

Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
Littler Mendelson, P.C., 650 California Street, 20th Floor, San Francisco, CA 94108-2693 (business)
- ☐ The fax number from which I served the documents is (complete if service was by fax):
- On (date): February 10, 2016 I served the following documents (specify):
Defendant Southwest Airlines Co.'s Answer To Plaintiff's Class Action Complaint

☐ The documents are listed in the Attachment to Proof of Service-Civil (Documents Served) (form POS-040(D)).
- I served the documents on the person or persons below, as follows:
 - Name of person served: Shaun Setareh, Esq. / Thomas Segal, Esq.
 - ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:
Setareh Law Group, 9454 Wilshire Blvd., Suite 907, Beverly Hills, CA 90212 (business)
 - ☐ (Complete if service was by fax.)
 (1) Fax number where person was served:

 (2) Time of service:

☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
- The documents were served by the following means (specify):
 - ☐ By personal service. I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

Page 1 of 3

FAXED COPY

CASE NAME Lewis v. Southwest Airlines Co.	CASE NUMBER RG16799791
--	---------------------------

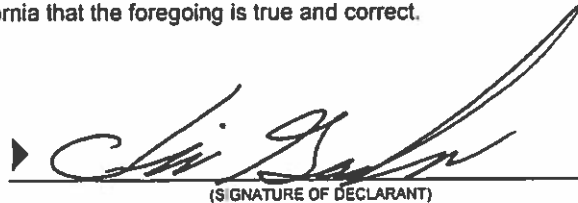
6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state): San Francisco, CA
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 10, 2016

Charisse Goodman

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

EXHIBIT 5

[SETAREH LAW GROUP Attn: Setareh, Shaun 9454 Wilshire Blvd. Suite 907 L Beverly Hills, CA 90212____]	[Southwest Airlines Co., a Texas Corporation L]
--	---

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Lewis Plaintiff/Petitioner(s) VS. Southwest Airlines Co., a Texas Corporation Defendant/Respondent(s) (Abbreviated Title)	
--	--

No. RG16799791

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 02/16/2016 TIME: 03:00 PM DEPARTMENT: 30
LOCATION: U.S. Post Office Building, Second Floor
201 13th Street, Oakland

Case Management Conference:
DATE: 03/22/2016 TIME: 03:00 PM DEPARTMENT: 30
LOCATION: U.S. Post Office Building, Second Floor
201 13th Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 30 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 268-5104. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 30.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 30.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 30 by e-mail at Dept.30@alameda.courts.ca.gov or by phone at (510) 268-5104.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 01/13/2016

Chad Finke Executive Officer / Clerk of the Superior Court

By

 ^{digital}

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 01/14/2016.

By

 ^{digital}

Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Shaun Setareh (SBN 204514) Setareh Law Group 9454 Wilshire Blvd. Suite 907 Beverly Hills, CA 90212 TELEPHONE NO. (310) 888-7771 FAX NO. (310) 888-0109 ATTORNEY FOR (Name): Justin Lewis		FILED BY FAX ALAMEDA COUNTY January 12, 2016 CLERK OF THE SUPERIOR COURT By Burt Moskaira, Deputy CASE NUMBER RG16799791	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS 1225 Fallon Street MAILING ADDRESS 1225 Fallon Street CITY AND ZIP CODE Oakland, CA 94612 BRANCH NAME Rene C. Davidson		CASE NUMBER RG16799791	
CASE NAME Lewis v. Southwest Airlines Co., et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
Items 1-6 below must be completed (see instructions on page 2)		JUDGE: DEPT:	

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/DWD (23) Non-P/DP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|---|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **Four (4)**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case (You may use form CM-015)

Date: January 12, 2016

Shaun Setareh

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE	
<ul style="list-style-type: none"> Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. File this cover sheet in addition to any cover sheet required by local court rule. If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only. 	

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09)	Environmental/Toxic Tort (30)
Asbestos (04)	Collection Case—Seller Plaintiff	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18)	Enforcement of Judgment (20)
Product Liability (not asbestos or toxic/environmental) (24)	Auto Subrogation	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Other Coverage	Confession of Judgment (non-domestic relations)
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Sister State Judgment
Other Professional Health Care Malpractice	Contractual Fraud	Administrative Agency Award (not unpaid taxes)
Other PI/PD/WD (23)	Other Contract Dispute	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Real Property	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	RICO (27)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Other Complaint (not specified above) (42)
Other PI/PD/WD	Writ of Possession of Real Property	Declaratory Relief Only
Non-PI/PD/WD (Other) Tort	Mortgage Foreclosure	Injunctive Relief Only (non-harassment)
Business Tort/Unfair Business Practice (07)	Quiet Title	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (06)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Commercial Complaint Case (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Other Civil Complaint (non-tort/non-complex)
Fraud (16)	Commercial (31)	Miscellaneous Civil Petition
Intellectual Property (19)	Residential (32)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Other Petition (not specified above) (43)
Legal Malpractice	Judicial Review	Civil Harassment
Other Professional Malpractice (not medical or legal)	Asset Forfeiture (05)	Workplace Violence
Other Non-PI/PD/WD Tort (35)	Petition Re: Arbitration Award (11)	Elder/Dependent Adult Abuse
Employment	Writ of Mandate (02)	Election Contest
Wrongful Termination (36)	Writ—Administrative Mandamus	Petition for Name Change
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	Petition for Relief From Late Claim
	Writ—Other Limited Court Case Review	Other Civil Petition
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

EXHIBIT 6

1 ROD M. FLIEGEL, Bar No. 168289
rfliegel@littler.com
2 ALISON S. HIGHTOWER, Bar No. 112429
ahightower@littler.com
3 LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
4 San Francisco, California 94108.2693
Telephone: 415.433.1940
5 Facsimile: 415.399.8490

6 Attorneys for Defendant
SOUTHWEST AIRLINES CO.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 JUSTIN LEWIS, on behalf of himself, all
others similarly situated,

12 Plaintiff,
13

14 v.

15 SOUTHWEST AIRLINES CO., a Texas
Corporation; and DOES 1 through 100,
Inclusive,
16

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No.

**DECLARATION OF SHARI CONAWAY IN
SUPPORT OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT**

Complaint Filed: January 12, 2016
(Alameda Superior Court Case No.
RG16799791)

1 I, Shari Conaway, hereby declare and state:

2 1. I am currently a Director of People for Defendant SOUTHWEST AIRLINES
3 CO. ("SWA"), and I have held this position since April 2011. From October 2007 until that date, I
4 previously was Senior Manager of People. I have personal knowledge of the facts set forth in the
5 Declaration and I can and would testify to those facts if called and sworn as a witness.

6 2. In my capacity as the Director of People, I am familiar with the corporate
7 structure for SWA. SWA is a corporation incorporated in Texas with its headquarters located in
8 Dallas, Texas. At this headquarters, SWA's core executive and administrative functions are
9 performed, including but not limited to policy-making and corporate decisions, air operations,
10 corporate communications (internal and external), finance, human resources, compliance,
11 advertising and marketing, legal advice, and information technology. Regular meetings of SWA's
12 board of directors occur at its Dallas headquarters and the majority of its corporate officers work out
13 of this headquarters.

14 3. In my role as Director of People, I have access to the personnel files of SWA
15 current and former employees kept in the ordinary course of business. Attached as **Exhibit A** is an
16 excerpt of the job application submitted by Justin Craig Lewis on January 29, 2015, providing his
17 residential address. Mr. Lewis was hired by SWA and worked at Los Angeles International Airport
18 until his termination.

19 4. My responsibilities as Director of People have included general oversight
20 regarding the recruitment, background screening and verification process SWA undertakes before
21 hiring job applicants nationwide. As a result of these responsibilities, I have access to data
22 accurately recorded in an applicant tracking system regarding the number of persons who have been
23 screened by our current vendor, Sterling Infosystems ("Sterling"), since 2013.

24 5. Our data shows that in 2014 a total of 7,509 persons were screened by Sterling
25 and 4,153 persons were hired, and in 2015, 13,793 persons were screened and 6,658 persons were
26 hired nationwide.

27 6. During the calendar year 2011 and until sometime in late 2013 or early 2014,
28 SWA utilized a vendor called First Advantage to conduct background screens. SWA no longer has

1 access to the number of screens performed by First Advantage. However, the data above indicates
2 that on average SWA screened 1.95 persons for every person hired during the two full years for
3 which SWA has data from Sterling in 2014 and 2015. I have access to human resources data that
4 accurately tracks the number of people hired by SWA nationwide by date. Based on this data, in
5 2011, SWA hired 4,916 persons, in 2012 SWA hired 2,579 persons, and in 2013 SWA hired 1,732
6 persons. Multiplying these numbers by the average of 1.95 screens per person hired results in the
7 following estimate of background screens:

8 2011: 4,916 hires x 1.95 = 9,586 screens

9 2012: 2,579 hires x 1.95 = 5,029 screens

10 2013: 1,732 hires x 1.95 = 3,377 screens

11 2014: 7,509 screens

12 2015: 13,793 screens.

13 **Total: 39,294**

14 I declare under penalty of perjury under the laws of the United States of America that
15 the foregoing is true and correct.

16 Executed this 12 day of February, 2016.

17 
18 Shari Conaway

19 Firmwide:138309009.1 081298.1020
20
21
22
23
24
25
26
27
28

EXHIBIT A

Southwest Airlines Co. Employment Application

2/11/15
CLEAR

For all jobs requiring airport secured area access, federal TSA regulations require an FBI fingerprint-based criminal history records check. Southwest also requires applicants who have passed the interview process to complete a ten (10) year employment review and criminal history inquiry, including providing information on employment, education, community service, unemployment, and FBI Fingerprint based criminal history final disposition for all time periods in the last ten years. You must provide all the information requested in this application. Be sure to include correct, current telephone numbers and names of your present and former employers. Consideration of your application may be delayed or discontinued if you do not provide all the requested information in a timely manner.

If applicable and currently available, please provide the following, with your application :
(If not provided, may delay or prevent review of your application)

- Transcripts (original or copy) and/or Diploma (original) of the highest level of education earned. Diplomas will be verified and returned to you the same day.
- DD214 - Member 4 (original or copy) (Only if you have been in the military in the last 5 years).
- For Driving Positions Only: Copy of valid, current U.S. Driver's License. For these positions, Southwest Airlines will review your motor vehicle record in order to ensure that candidates meet the qualifications and standards for these jobs. If you have held a driver's license in another state in the last 3 years, please provide the license number.
 - o Note: You must possess a valid (not suspended, invalid or expired), current driver's license that allows you to perform required job duties.

Helpful hints to assist you in fully completing the application:

Criminal History: Federal regulation require Southwest to investigate final disposition of arrest and criminal charges reported on the FBI report which may include arrests before the last ten years, all of which must be investigated to obtain final disposition.

Residence Addresses: You must list all the addresses where you have resided for the past 10 years or back to the month you turned age 18, whichever is shorter.

Southwest Airlines Co. Employment Application

Consideration for employment may be delayed or discontinued if you do not complete ALL sections.

CONFIDENTIAL/PERSONAL INFORMATION (Please use full LEGAL NAME as it appears on your social security card)

LEGAL Last Name:
Lewis

LEGAL First Name:
Justin

LEGAL Middle Name:
Craig

Please list any other name(s) you have used in the last ten (10) years. (Maiden, aliases, etc.):
NONE

Social Security Number:

Current Driver's License Number:

Expiration Date:
1/17/2018

State Issued:
CA

If you have held a driver's license in another state in the last 3 years provide:

Driver's License Number:

State Issued:

Current Mailing Address

Address 1:
3642 Schaefer Street

Address 2:

City:
Culver City

State:
CA

Zip:
90232

Home Phone:
3108379028

Cell Phone:
3108190375

Work Phone:
310-846-3747

May we contact you at work?

☒ Yes ☐ No

E-mail Address:
Lewis.Justin27@yahoo.com

May we contact you via e-mail?

☒ Yes ☐ No

Read Question and Answer "Yes" or "No"

1. Are you at least 18 years of age?

☒ Yes ☐ No

2. Are you authorized to work in the U.S.?

☒ Yes ☐ No

3. Will have authorization to work in US by date of hire.

☒ Yes ☐ No

4. Have you ever been interviewed by Southwest Airlines or AirTran Airways?

☐ Yes ☒ No

If "Yes," provide the following:

Date:

Location:

Position:

5. Have you ever attended a Southwest Airlines or AirTran Airways training class?

☐ Yes ☒ No

If "Yes," provide the following:

Date:

Location:

Position:

6. Have you ever been employed by Southwest Airlines or AirTran Airways?

☐ Yes ☒ No

If "Yes," provide the following:

Date:

Location:

Position:

Employee Number:

7. Have you ever been a contractor or temporary worker performing work at any Southwest Airlines or AirTran Airways location?

☐ Yes ☒ No

If "Yes," provide the following:

Company:

Date:

EXHIBIT 7

1 ROD M. FLIEGEL, Bar No. 168289
rfliegel@littler.com
2 ALISON S. HIGHTOWER, Bar No. 112429
ahightower@littler.com
3 LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
4 San Francisco, California 94108.2693
Telephone: 415.433.1940
5 Facsimile: 415.399.8490

6 Attorneys for Defendant
SOUTHWEST AIRLINES CO.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 JUSTIN LEWIS, on behalf of himself, all
others similarly situated,

12 Plaintiff,
13

14 v.

15 SOUTHWEST AIRLINES CO., a Texas
Corporation; and DOES 1 through 100,
Inclusive,
16

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No.

**DECLARATION OF ALISON S.
HIGHTOWER IN SUPPORT OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT**

Complaint Filed: January 12, 2016
(Alameda Superior Court Case No.
RG16799791)

1 I, Alison S. Hightower, hereby declare and state:


2 1. I am a shareholder of the law firm of Littler Mendelson, P.C., counsel of
3 record for Defendant SOUTHWEST AIRLINES CO. ("SWA") in this action.

4 2. I have personal knowledge of the facts set forth in the Declaration and I can
5 and would testify to those facts if called and sworn as a witness.

6 3. I spoke with counsel for Plaintiff, Shaun Setareh of the Setareh Law Group,
7 on February 9, 2016 regarding this lawsuit. Mr. Setareh informed me in that conversation that he
8 contends that SWA willfully violated the Fair Credit Reporting Act and that he seeks the maximum
9 statutory damages on behalf of Plaintiff Justin Lewis and the putative class.

10 I declare under penalty of perjury under the laws of the United States of America that
11 the foregoing is true and correct.

12 Executed this 12th day of February, 2016.

13 

14 Alison S. Hightower

15 Firmwide 138609023.1 081298.1020

EXHIBIT 8

1 ROD M. FLIEGEL, Bar No. 168289
rfliegel@littler.com
2 ALISON S. HIGHTOWER, Bar No. 112429
ahightower@littler.com
3 LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
4 San Francisco, California 94108.2693
Telephone: 415.433.1940
5 Facsimile: 415.399.8490

6 Attorneys for Defendant
SOUTHWEST AIRLINES CO.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10

11 JUSTIN LEWIS, on behalf of himself, all
others similarly situated,

12 Plaintiff,
13

14 v.

15 SOUTHWEST AIRLINES CO., a Texas
Corporation; and DOES 1 through 100,
Inclusive,
16

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. RG16799791

**NOTICE TO STATE COURT OF
REMOVAL OF CIVIL ACTION
(RG16799791) TO FEDERAL COURT
UNDER 28 U.S.C. §§ 1331, 1332, 1441(a), &
1446 BY DEFENDANT SOUTHWEST
AIRLINES CO.**


Complaint Filed: January 12, 2016
Trial Date: None set

1 **TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES:**

2 PLEASE TAKE NOTICE that on February 12, 2016, Defendant SOUTHWEST AIRLINES
3 CO. filed a Notice of Removal of Civil Action with the office of the Clerk of the United States
4 District Court in and for the Northern District of California pursuant to 28 U.S.C. §§ 1331, 1332,
5 1441(a) and 1446. Attached as Exhibit 1 and incorporated herein by reference is a true and correct
6 copy of said Notice of Removal of Civil Action (Case No. RG16799791).

7 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446(d), the filing of this
8 Notice of Removal of Civil Action with the United States District Court, together with the filing of
9 the Notice to State Court of Removal of Civil Action with this Court, effects the removal of this
10 action (No. RG16799791) and this Court may proceed no further unless and until the federal court
11 remands the case.

12 Dated: February 16, 2016

13 
14 _____
15 ROD M. FLIEGEL
16 ALISON S. HIGHTOWER
17 LITTLER MENDELSON, P.C.
18 Attorneys for Defendant
19 SOUTHWEST AIRLINES CO.

20 Firmwide: 138298767.1 081298.1020
21
22
23
24
25
26
27
28